



**MCI Telecommunications
Corporation**

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

September 2, 1997

Mr. William F. Caton
Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554

**Re: Petition For Reconsideration: Changes to the Board of
Directors of the National Exchange Carrier Association,
Inc., Notice of Inquiry, CC Docket No. 97-21**

Dear Mr. Caton:

Enclosed herewith for filing are the original and 4 copies of MCI Telecommunications Corporation's Petition For Reconsideration in the above-captioned docket.

Please acknowledge receipt by affixing an appropriate notation on the copy of the MCI Petition furnished for such purpose and remit same to the bearer.

Sincerely yours,

Lawrence Fenster

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LIST A-605

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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SEP 2 1997

In the Matter of:

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Changes to the Board of
Directors of the National Exchange
Carrier Association, Inc.

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CC Docket No. 97-21

PETITION FOR RECONSIDERATION

I. Introduction

MCI Telecommunications Corporation ("MCI"), pursuant to Section 1.429 of the Commission's rules, submits the following petition for reconsideration in the above-captioned proceeding.¹ MCI urges the Commission to balance the composition of the Boards of Directors of the School and Libraries and Rural Health Care Corporations evenly among subsidy recipients and subsidy providers. MCI also urges the Commission to ensure an unbiased transition to a permanent administrator by limiting the USAC to its role as temporary administrator.

¹ In the Matter of: Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Notice of Inquiry, CC Docket No. 97-21, FCC No. 97-21, released January 10, 1997.

II. Background

On July 18, 1997, the Commission released a Report and Order prescribing a series of steps that NECA will be required to take in order to serve as temporary administrator of the universal service programs.²

- ▶ The Commission directed NECA to create a separate subsidiary (the USAC) to administer the high-cost and low-income programs and handle billing and collection for all universal service programs.
- ▶ Special committees of the USAC, the High-Cost and Low-Income Committees, will be the temporary administrator of the high-cost and low-income programs.
- ▶ The USAC will have a 17-member board, comprised of representatives from 3 ILECs, 2 IXC's, 1 CAP, 1 CLEC, 1 Cable Operator, 1 Information Service Provider, 3 Schools, 1 Library, 1 Rural Health Care Provider, 1 Low Income Consumers, 1 State Regulator, and 1 State Consumer Advocate.
- ▶ The directors representing ILECs, IXC's, CAPS, CLEC, Low Income Consumers, State Consumer Advocates, and State Regulators will also serve on the Board of Directors of the High Cost and Low Income Committee.
- ▶ The Commission also directed NECA to oversee the creation of two new independent corporations to administer the schools and libraries and rural health care programs respectively.
- ▶ The Board of the Schools and Libraries Corporation will have seven members, including three schools' representatives, one library representative, one service provider representative, one independent director, and the CEO of the Corporation. The schools and libraries representatives will be drawn from the schools and libraries representatives on the USAC Board, and the service provider representative will be drawn from the service provider representatives on the USAC board.

² Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Report and Order, and Second Order on Reconsideration, July 18, 1997.

- ▶ The Board of the Rural Health Care Corporation will consist of five members, including two rural health care representatives, one service provider representative, one independent director, and the CEO. One of the two rural health care representatives and the service provider representative are to be drawn from the USAC Board.
- ▶ The Schools and Libraries and Rural Health Care Corporations will continue to perform their designated functions after the permanent administrator is chosen.

III. Commission's Proposals Do Not Satisfy The Joint Boards' Neutrality Criteria

On November 8, 1996, the Federal-State Joint Board on Universal Service released a Recommended Decision establishing criteria that the new universal service administrator should satisfy.³ According to the Joint Board, the administrator, including its Board of Directors, must: 1) be neutral and impartial; 2) not advocate specific positions to the Commission in non-administration-related proceedings; 3) not be aligned or associated with any particular industry segment; and 4) not have a direct financial interest in the support mechanisms established by the Commission. The Commission adopted its various proposals on its own motion, and did not permit parties to comment on its proposals. The Commission's proposals fail to satisfy any of the Joint Board's criteria with regard to the composition of the Schools and Libraries and the Rural Health Care Corporations.

The composition of the Boards of Directors of the Schools and Libraries, and the Rural Health Care Corporations will be: partisan; aligned with a particular industry

³ Federal-State Joint Board on Universal Service, Recommended Decision, CC Docket No. 96-45, November 8, 1996

segment; interested in advocating policies favoring the interests of subsidy recipients; and have an indirect financial interest in the support mechanisms established by the Commission. This will occur because the Commission has constructed the Boards of Directors of the Schools and Libraries and Rural Health Care Corporations so they will be controlled by subsidy recipients.

The Schools and Libraries Corporation is to have 7 members. Four of these members will be chosen to explicitly represent school and library interests. These 4, plus an independent director, will choose the CEO. So, at least 5 of the 7 positions will be controlled by those receiving subsidies. The two appointees from rural health clinics will have a controlling vote over the appointment of the Rural Health Care Corporation CEO. So at least 3 of the 5 positions on the Rural Health Care Corporation Board will be controlled by those receiving the subsidies.

Thus, subsidy recipients have the means to act on their own behalf. They also have an interest to act on their own behalf because the functions of these corporations include reviewing bills for services, submitting quarterly projections of administrative expenses, and authorizing performance of audits of schools, libraries and rural health care provider beneficiaries. In addition, these corporations will have an interest in intervening in policy decisions related to their mandate in ways that may unfairly benefit recipients at the expense of subsidy providers.

It is surprising that the Commission has permitted unrepresentative Boards of Directors to be established for these corporations, in light of the ability of NECA's unrepresentative Board of Directors to act on behalf of current subsidy recipients. In

order to establish a representative Board of Directors for the Schools and Libraries Corporation, MCI recommends the Commission substitute a consumer representative for one school representative, and further reduce the school representative to one, by splitting the industry slot into an incumbent LEC and a CLEC.⁴

The Schools and Libraries' Board would have the following composition:

- ▶ one school representative;
- ▶ one library representative;
- ▶ one CLEC representative;
- ▶ one ILEC representative;
- ▶ one service provider representative;
- ▶ one independent director; and
- ▶ one CEO of the Corporation.

Representation to this board would be equally apportioned among 2 subsidy recipients and 2 subsidy providers. The service provider representative does not have a clear subsidy interest, and the director would remain independent. Thus, the CEO would also be un beholden to any single interest.

In order to establish a representative Board of Directors for the Rural Health Care Corporation, MCI recommends the Commission substitute an industry representative for one of the rural health care representatives, establishing the following composition for the Rural Health Care Board:

- ▶ one rural health care representative;
- ▶ one industry representative;
- ▶ one service provider representative;
- ▶ one independent director; and
- ▶ one CEO of the Corporation

⁴ School Representation on the Board of Directors of the USAC would be reduced from three to one. The USAC Board would have 15 members.

Representation to this board would be more equally apportioned among subsidy recipients and subsidy providers. Once again, the service provider representative would not have a clear subsidy interest, and the director would remain independent. Again, the CEO would remain un beholden to any single interest.

IV. The Commission's Proposal Does Not Permit An Unbiased Choice of Permanent Administrator

Another troubling feature of the Commission's Report and Order is the failure to take any steps to ensure that NECA's appointment as the temporary administrator of universal support mechanisms does not give NECA, or its USAC subsidiary, any advantage in its bid to become the permanent administrator of universal support mechanisms. In fact, certain features of the Commission's proposal give NECA's USAC advantages that appear to guarantee that it will be chosen as the permanent administrator.

The first advantage comes in the form of preferential access to information about the functioning of the universal support mechanisms. The Commission chose NECA as temporary administrator, in part, in order to immediately establish the new mechanisms required for universal service support.⁵ Thus, the USAC will obtain substantial information about the day-to-day functioning of the administration of the Schools and Libraries Corporation's funds, the Rural Health Care Corporation's funds, and possibly

⁵ See Report and Order at 17. "We adopted this recommendation in the interest of speedy implementation of the universal service support mechanisms...our appointment of a temporary administrator is crucial to ensuring timely implementation of the new universal service support mechanisms."

the forward looking subsidy mechanisms. The Commission's requirement that the USAC turn over existing intellectual property to the permanent administrator in the event the USAC is not chosen, fails to prevent NECA's USAC from unfairly benefitting from the information and experience gained from its role as temporary administrator. In order to ensure unbiased bidding for the permanent administrator position, the Commission should prohibit the USAC from bidding to become permanent administrator. A new NECA subsidiary could place a bid, but the Commission must take auditable steps that show NECA has not used any intellectual property, staff, or information available from the USAC in preparing its bid to become permanent administrator.

The second advantage comes in the form of a preferential relation between USAC's Board of Directors (which govern a temporary body) and the Boards of Directors of the Schools and Libraries and Rural Health Care Corporations (which govern a permanent body). The Commission's Report and Order requires approximately one-half of the board members of the Schools and Libraries and Rural Health Care Corporations to be drawn from the USAC's Board of Directors. By failing to establish a new mechanism for being chosen to serve on the Boards of Directors of the Schools and Libraries and Rural Health Care Corporations at the time the permanent administrator is chosen, the Commission has, in effect, required the USAC and its Board to continue indefinitely.

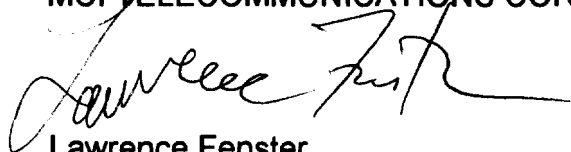
To remedy this flaw, the Commission must sever the relation between the Board of Directors of the USAC, and the Boards of Directors of the Schools and Libraries and

Rural Health Care Corporations. One option would require the Board of Directors of the Schools and Libraries, and Rural Health Care Corporations to resign before NECA or the USAC submits a bid to become permanent administrator. The Commission would also have to establish a mechanism for choosing Boards of Directors for Schools and Libraries and Rural Health Care Corporations that was not linked to the Boards of Directors of the permanent administrator. Another option would immediately establish a mechanism for choosing the Boards of Directors for Schools and Libraries and Rural Health Care Corporations that is not linked to the Boards of Directors of the permanent administrator.

VI. Conclusion

For the above-mentioned reasons, MCI encourages the Commission to adopt the recommendations contained in its Petition for Reconsideration.

Respectfully submitted,
MCI TELECOMMUNICATIONS CORPORATION

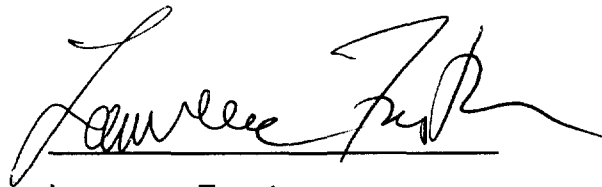
A handwritten signature in black ink, appearing to read "Lawrence Fenster", is written over the printed name and company information.

Lawrence Fenster
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1801 Pennsylvania Ave., NW
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(202) 887-2180

September 2, 1997

STATEMENT OF VERIFICATION

I have read the foregoing and, to the best of my knowledge, information and belief, there is good ground to support it, and it is not interposed for delay. I verify under penalty of perjury that the foregoing is true and correct. Executed on September 2, 1997.

A handwritten signature in black ink, appearing to read "Lawrence Fenster", written over a horizontal line.

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CERTIFICATE OF SERVICE

I, Vivian Lee, do hereby certify that a copy of the foregoing **Petition for Reconsideration** has been sent by United States first class mail, postage prepaid, hand delivery, to the following parties on this 2nd day of September, 1997.

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A handwritten signature in cursive script that reads "Vivian Lee". The signature is written in dark ink and is positioned above a solid horizontal line.

Vivian Lee

Hand Delivery**